IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5048 of 2006
With
SPECIAL CIVIL APPLICATION No. 10800 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUDHABEN CHANDUBHAI VALAND - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR PARESH UPADHYAY for Petitioner(s) : 1,
MR SIRAJ GORI AGP for Respondent(s) : 1-3,
MR BIREN A VAISHNAV for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 25/09/2006

ORAL JUDGMENT

1. These petitions were heard on 1st September, 2006 and were thereafter kept for dictation of judgment on 8th September, 2006. For want of time petitions were adjourned couple of times thereafter and finally today petitions are disposed of in term of this judgment.

2. Facts leading to the petitions are as follows:

2.1. Petitioner of Special Civil Application No.5048/06 one Smt. Sudhaben Chandubhai Valand seeks family pension on the basis of the service rendered by her deceased husband as a Peon in respondent no.4-D.S.Patel Technical Institute, Sunav.

2.2. It is not in dispute that the husband of the petitioner discharged his duty as a Peon in the said institute who is respondent no.4 before this Court. He joined the service in the year 1982 and died on 28/1/2001 while still in service.

2.3. Upon death of the husband of the petitioner, the petitioner was paid a sum of Rs.30,510/- from the GPF account of the deceased employee. The petitioner also received a sum of Rs.50,796/- towards gratuity.

3. It is the case of the petitioner that Government of Gujarat introduced a pension scheme for teaching and non-teaching staff of the Non-Government Grant-in-Aid Technical Institutes vide resolution dated 17/1/1996. It is the case of the petitioner that respondent no.4-Institute where her husband was working is a Non-Government Grant-in-Aid Technical Institute and is, also covered by the said resolution dated 17/1/1996.

3.1. As per the said pension scheme introduced vide resolution dated 17/1/1996 existing employees had to exercise option if they wanted to switch over to the pension scheme. Husband of the petitioner exercised such option. It is the case of the petitioner that only for those employees who opt for pension, that they would be covered under GPF scheme and in case of the petitioner's husband GPF account

was actually opened.

3.2. Upon the death of the husband of the petitioner, she applied to the authorities for being granted family pension. Since her case for family pension was not decided for a long time, she approached this Court by filing the present petition, praying for a direction to the authorities to finalise the family pension case of the petitioner.

4. On behalf of State Government an affidavit in reply dated 13th July, 2006 has been filed by one Shri Y.M.Shukla, Joint Director of Technical Education. In the affidavit in reply that fact that the husband of the petitioner served as a Peon in respondent no.4-Institute from the year 1982 to 28/1/2001 is not disputed. It is stated that pension scheme was introduced for the Grant-in-Aid Technical Institutes by Government Resolution dated 17/1/1996. In all 26 institutions to which pension scheme was to be made applicable were mentioned in the said Government Resolution. As per clause 5 of the said Government Resolution Grant-in-Aid Technical Institutes were required to deposit their contribution along with

accrued interest of Contributory Provident Fund (CPF for short) before the State Government within a period of two months from the date of the said Government Resolution . It is stated that however, respondent no.4-institute was not covered by the CPF scheme. It is stated that in all 20 institutes including respondent no.4 were not covered under CPF scheme. A proposal was, therefore, sent for inclusion of these institutions in pension scheme to the Education Department but the same was turned down by the Education Department on the ground that since the institutes in question were not covered under the CPF scheme, benefit of pension cannot be given to the employees of these 20 institutions. It is further stated that since the husband of the petitioner was not covered under the CPF scheme benefit of Government Resolution dated 17/1/1996 cannot be made available to the petitioners.

5. Respondent no.4-Institute has filed an affidavit in reply dated 1st August, 2006. In the said affidavit in reply, it is contended inter alia that respondent no.4-Institute is covered by the Government Resolution dated 17/1/1996. Upon death of the husband of the petitioner necessary proposal

was made by the Institute to the Director of Technical Education for finalisation of pension case. It is further stated that Director of Technical Education, State of Gujarat by a letter dated 20th December, 1994 conveyed to respondent no.4 and other similarly situated institutions that the Government has vide letter dated 27/9/1994 accord approval in principle to implement CPF scheme in Non-Government Technical Institutions. As per the said letter necessary orders were required to be issued by the Government. As required by the said letter respondent no.4 had made necessary proposals in the prescribed format to the authorities and supplied necessary information as asked for by the authorities in this regard. It is stated that despite this, the Government did not grant permission to implement CPF scheme in respondent no.4-Institute till passing of the resolution dated 17/1/1996. GPF accounts of all employees of the institutes are opened by the Director of Technical Education. Eventually by communication dated 4/10/2004 that a policy decision on behalf of the State Government was conveyed that no proposal in this regard be made. It is thus stated that CPF scheme could not be implemented in the respondent no.4-Institute for want of permission

from the Government. It is categorically stated that all through out the institute was ready to make any contribution as may be required by the Government. It is stated that after 17/1/1996 also in atleast two institutions, the Government permitted implementation of CPF scheme.

6. Petitioner of Special Civil Application No.10800/04 is one Smt. Manjulaben Jayantilal Solanki. She also claims family pension from the Government. Her husband was working in Acharya Shree R.K.Patel Technical Institute respondent no.4 herein. He was working as an Instructor from 6/6/1983 and died while in service on 20th November, 2003. She also claims family pension along similar lines contending that respondent no.4-Institute is covered by the pension scheme formulated by the Government vide Government Resolution dated 17/1/1996.

7. It is not in dispute that respondent no.4 herein is also a Non-Government Grant-in-Aid Technical Institute.

8. With respect to the tenure of service of the husband of the petitioner with respondent no.4-

Institute, there is no dispute. It is also not in dispute that in the list annexed with Government Resolution dated 17/1/1996 respondent no.4-Institute is also mentioned.

9. In this petition also the State Government has opposed the petition on similar lines contending inter alia that Acharya Shree R.K.Patel Technical Institute was not covered under CPF scheme and that, therefore, employees cannot seek pension by virtue of resolution dated 17/1/1996.

10. In this petition also, the Institute has filed affidavit in reply contending that all steps were taken by the institute seeking permission of the Government to implement CPF scheme which was not granted by the Government. It is further stated that by virtue of order dated 1/3/2005 passed at the interim stage by this Court, the petitioner is granted minimum pension of Rs.1275/-p.m.

11. I have heard learned advocate Shri Paresh Upadhyay for the petitioners and learned AGP Shri Gori for the State authorities and learned advocate Shri Vaishnav and Shri Dhaval Barot for the

respective institutes in these petitions.

12. Details about the service tenure of the husbands of both the petitioners are not really in dispute. It is also not in dispute that the Government introduced a pension scheme for the staff of the non-government grant-in-aid Technical Institutes. This scheme was sought to be in substitution of the CPF scheme. Employees were, therefore, given option either to continue to be governed by the GPF scheme or to switch over to the Pension scheme. Husbands of both the petitioners have opted for pension scheme. Upon, their untimely and sudden death however, their widows when applied for family pension, the same was not granted by the Government.

13. Primarily the stand of the Government is that in these institutions from the very inception there was no CPF scheme. When by Government Resolution dated 17/1/1996 pension scheme was introduced, the same was in substitution of the CPF scheme. Since both institutions did not have an approved CPF scheme, employees of such institutions cannot seek pension.

14. Stand of the Government needs to be scrutinized

baring in mind factual aspects emerging on record.

15. It is not in dispute that the institutions are grant-in-aid institutions. For implementation of the CPF scheme, therefore, the institutions required permission of the Government. As per the affidavit in reply filed by such institutions before this Court it emerges that such permission was at the relevant time sought for from the Government. Necessary information as called for by the Government was supplied by these institutions from time to time. Despite this, without indicating any reasons, the Government did not permit these institutions to implement CPF scheme. No reasons are indicated in the affidavit in reply filed on behalf of the State Government to point out the reasons for not granting permission to such institutions by the Government to implement CPF scheme. This happened some time in the year 1994.

16. Shortly thereafter on 17/1/1996 Government introduced pension scheme making it applicable to all employees of aided technical institutions. Husbands of both the petitioners opted for pension scheme as per the resolution. At this stage, the stand of the

Government is that since the institutions did not have a CPF scheme, its employees cannot receive pension.

17. In so far as the institutions are concerned they could not have implemented the CPF scheme without permission of the Government. Reasons for not granting such a permission is not stated by the Government. To the stand of the institutions stated on oath that the institutions had not only applied for implementation of the CPF scheme, but had also supplied all necessary details from time to time as asked for by the Government, there is no denial from the authorities. Fact, therefore, remains that Government withheld permission in favour of these institutes to implement the CPF scheme in the year 1994. Subsequently, therefore, when pension scheme was introduced, benefits thereof could not have been withheld from the employees of such institutions only on the ground that there was no CPF scheme in operation in such institutions. So far as the employees are concerned, surely they cannot be blamed for non-implementation of the CPF scheme in the employer institutions.

18. In a welfare State for long serving employees benevolent measures such as Contributory Provident Fund or Pension have come to be accepted as a norm. The Government when assists and financially aids such technical institutions, ordinarily there should have been CPF scheme or a pension scheme. To leave the employees completely unprotected without providing for a CPF scheme or a pension scheme in the present day context of welfare state would appear somewhat unjust. In fact the government envisaged both - a CPF scheme and at the option of the existing employees also a pension scheme.

19. There is yet another aspect of the matter which cannot be lose sight of. The Government has introduced the pension scheme for the employees of the Grant-in-Aid Technical Institutes. Petitioners whose husbands were discharging duties in such institutes would be in a position to assert that Government cannot discriminate so far as these institutions are concerned vis-a-vis other institutions whose employees are receiving pensionary benefits. The situation would have perhaps be somewhat different had the employer institutions been responsible for non-implementation of the CPF scheme

at the relevant time. However, it is not the case of the Government none atleast brought on record to suggest that these institutions were in any manner responsible for non-implementation of the CPF scheme at the relevant time. If principally the Government for undisclosed reasons did not permit these institutions to implement CPF scheme, it is now not open for the Government to contend that for want of a valid CPF scheme in operation, the employees of the concerned institutions would not be covered under the pension scheme.

20. To a query raised by the Court, learned Asst. Government Pleader had stated that the burden of the Employer's Contribution to the CPF scheme would have been borne by the Government itself. Be that as it may, even the institutions have shown their willingness to deposit such amounts if so found necessary with accumulated interest.

21. In view of the above discussion, I find that reason for denying family pension to the petitioners as stated by the Government in its affidavit cannot be accepted.

22. Question of implementation of CPF scheme is primarily between the Government and the concerned institutes. Particularly, when the Government has not been able to pinpoint any delay, omission or error on part of such institutions in implementing CPF scheme and the assertion of the institutions that government did not permit them to implement CPF scheme is not denied by the Government, it would not be open for the Government to withheld pensionary benefits in favour of the petitioners pursuant to its Government Resolution dated 17/1/1996.

23. In the result, petitions are allowed by directing the Government authorities to pay family pension to the petitioners on the strength of the service rendered by their husbands before they died on the condition that the employer institutions if so found necessary by the Government, deposit with the Government, employer's contribution towards Provident Fund along with interest as per similar CPF schemes applicable in other technical institutions within a period of two months from today.

24. As noted earlier since petitioner in Special Civil Application No.10800/04 is receiving minimum

provisional pension by virtue of interim order passed by this Court, authorities will adjust such amounts already paid to her while finalizing her claim for remaining amount of family pension.

25. Petitioners shall start receiving full provisional family pension as early as possible and not later than by 30th November, 2006. Petitioners shall receive arrears upon finalization of their family pension latest by 31st January, 2007, however, in facts of the case, without interest if paid by that date. To the extent of delay thereafter respondent shall bear simple interest at the rate of 8% p.a. Special Civil Application No.5048/06 is disposed of accordingly. No costs. Special Civil Application No.10800/04 is also disposed of. Rule is made absolute to the above extent. No costs.

(Akil Kureshi, J.)

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